

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BMC, LLC

Plaintiff,

v.

ORDER
04-CV-105

VERLAN FIRE INSURANCE COMPANY
Defendant.

This case was referred to Magistrate Judge Hugh B. Scott pursuant to 28 U.S.C. § 636(b)(1). Defendant filed a motion to compel discovery and plaintiff filed a cross-motion for discovery, partial summary judgment and a protective order. On September 26, 2006, Magistrate Judge Scott filed a Decision and Order and Report and Recommendation. Magistrate Judge Scott granted defendant's motion to compel discovery, modify the scheduling order and awarding costs and fees associated with bringing the motion and denied plaintiff's motion to limit discovery or quash the subpoena served upon Lamperelli Construction Co., Inc. The Magistrate Judge recommended that to the extent that BMC sought partial summary judgment, that motion be denied without prejudice.

Plaintiff filed objections to the Report and Recommendation. Oral argument on the objections was held on January 31, 2007.

Pursuant to 28 U.S.C. § 636(b)(1)(A), the district court "may reconsider any pretrial matter under this [section] where it has been shown that the magistrate's order is clearly erroneous or contrary to law." The Court has reviewed plaintiff's objections and Magistrate Judge Scott's Decision and Order. Upon such review and after hearing argument from counsel, the Court finds that Magistrate Judge Scott's Decision and Order is neither clearly erroneous nor contrary to law.

Accordingly, the Court affirms the Decision and Order.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Scott's Report and Recommendation, plaintiff's motion for partial summary judgment is denied without prejudice.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA

CHIEF JUDGE

UNITED STATES DISTRICT COURT

DATED: February 2, 2007